



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chairman Hal Stratton
 Commissioner Thomas H. Moore
 Commissioner Mary Sheila Gall

ITEM:

Advance Notice of Proposed Rulemaking (ANPR) on Ignition of Upholstered Furniture
by Small Open flames and Smoldering Cigarettes
(Briefing package dated October 14, 2003, OS No. 4938)

DECISION:

The Commission voted unanimously (3-0) to commence a regulatory proceeding to address both small open flame and cigarette ignition of upholstered furniture by issuing the ANPR as drafted. The rulemaking under the Flammable Fabrics Act (FFA) could result in a mandatory flammability standard addressing upholstered furniture ignition by both small open flames and smoldering cigarettes.

Commissioners Gall and Moore each submitted statements to accompany their votes. The Commissioners' statements are attached.

For the Commission:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson".

Todd A. Stevenson
Secretary

* Ballot vote due October 17, 2003



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**STATEMENT OF THE HONORABLE
MARY SHEILA GALL ON REGULATORY
OPTIONS FOR ADDRESSING UPHOLSTERED
FURNITURE FLAMMABILITY**

October 17, 2003

I am voting to begin a regulatory proceeding to address both small open flame and cigarette ignition of upholstered furniture by issuing the Advance Notice of Proposed Rulemaking (ANPR). Since I had previously opposed the ANPR pertaining to small open flame ignition of upholstered furniture, this vote may be a surprise to some people. I am voting for the combined ANPR so that the Commission can consider the related issues of small open flame ignition and cigarette ignition in the same rulemaking. I have, however, some serious reservations about the findings that the Commission will eventually have to make in order to issue a proposed rule on these hazards.

Linking Small Open Flame and Cigarette Ignition

In 1993 the Commission received a petition from the National Association of State Fire Marshals to address the hazards of three types of ignition of upholstered furniture: small open flame, large open flame, and cigarette. In 1994 the Commission denied the part of the petition that concerned large open flame ignition, deferred the part of the petition that concerned cigarette ignition, and granted the part of the petition that concerned small open flame ignition. The Commission approved an ANPR for small open flame ignition. The part of the petition concerning cigarette ignition was deferred so that the Commission could assess the effectiveness of the Upholstered Furniture Action Council (UFAC) voluntary standards program of cigarette ignition resistance. This Commission action had the effect of "decoupling" the issues of small open flame and cigarette ignition resistance of upholstered furniture.

Since 1994 the Commission staff has done a great deal of commendable work in assessing the resistance of upholstered furniture and upholstery materials to small open flame ignition, and in evaluating the various regulations in place in states and other countries designed to alleviate this hazard. The staff's thinking has evolved from an approach relying primarily on the resistance of fabric to small open flame ignition, to other options, such as fire blocking barriers. These options would give furniture manufacturers flexibility in achieving flammability compliance. This work has demonstrated, however, that most of the benefits that would result from a *small open flame standard* would come from the effect that such a standard would have on preventing *cigarette ignitions*. Such a result is hardly surprising, given that cigarette ignition

remains by far the greater problem. But there may be some legal difficulty associated with counting benefits achieved in reducing one risk by a standard designed to address a completely different risk. Moreover, in the absence of a regulatory test for cigarette ignition, the benefits counted from its reduction with a small open flame standard would always be somewhat speculative.

Publishing an ANPR that links the two hazards will overcome the procedural objections to a small open flame standard which counts most of its benefits from a reduction of cigarette ignition. I am voting for the combined ANPR in order to overcome these procedural and possibly legal objections to a small open flame standard. The Commission may now consider *all* of the costs and *all* of the benefits of a standard that combines small open flame and cigarette ignition flammability resistance. I have, however, serious reservations about whether the Commission will be able to develop a proposed rule that meets the statutory criteria. These reservations are two-fold. First, the costs of making upholstered furniture resistant to small open flame ignition may not bear a reasonable relationship to the benefits that will accrue from such resistance. Secondly, the present UFAC voluntary standard may be adequate to address the risk of cigarette ignition, and there is likely to be substantial compliance with that voluntary standard. If that is the case, the Commission would clearly not be in a position to make the findings required by the Flammable Fabrics Act (FFA) and would have to terminate rulemaking.

Cost-Benefit

Section 4(j)(2)(B) of the FFA requires that the benefits expected from a flammability regulation must bear a reasonable relationship to its costs. Not only is cost-benefit analysis required by the FFA, it is central to any system of rational regulation. Dispensing with it or attempting to short-circuit it runs a substantial risk of reaching economically irrational results. Since virtually all the evidence pertaining to small open-flame ignition resistance indicates that its benefits do *not* bear a reasonable relationship to the costs, I have considerable reservations about whether the Commission will be able to propose a rule specifying resistance to small open flame ignition.

The most recent staff analysis of costs and benefits of a rule specifying small open flame ignition resistance finds that the best estimate of the potential benefit to consumers of such a rule *from reductions in small open flame ignitions* would be about \$11.01 per furniture unit. The costs of such a rule vary according to how manufacturers might choose to meet its requirements. The cost to consumers of flame-resistant treatment to fabric range from \$11-18 for chairs and \$20-34 for sofas. Testing costs would add an additional \$4-5 for chairs and \$7-9 for sofas and loveseats. Barriers would be even more expensive: \$30-43 for chairs and \$50-65 for sofas and loveseats. There would be an additional small cost to maintain records: \$0.63 per unit. Thus the lowest cost for an upholstered chair using flame-resistant fabrics would be about \$15.63. The highest cost for a sofa using a barrier would be \$65.63.

These figures show that the costs of a rule specifying small open flame resistance exceed the benefits by a minimum of approximately 42% and a maximum of approximately 450%. There is simply no way that such an excess of costs over benefits can be construed to be a "reasonable relationship." It is true that the staff's estimate of the benefits of reducing small

open flame ignition *and* cigarette ignition exceed the costs of flame resistant fabric. But these benefits must be assessed in light of the adequacy of the existing UFAC voluntary standard, and the likelihood that there will be substantial compliance with that standard.

UFAC Voluntary Standard

Legal Authority

Section 4(j)(2) of the Flammable Fabrics Act provides guidance on the findings the Commission must make in order to promulgate a mandatory standard when a voluntary standard exists that addresses the same risk of injury. Specifically, the Commission must find that compliance with the existing voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury, or, that it is unlikely that there will be substantial compliance with the voluntary standard. The evidence we have seen thus far strongly suggests that the present UFAC voluntary standard is adequately addressing the risk of cigarette ignition, and that there is substantial compliance with this voluntary standard.

Cigarette Resistance of Products on the Market

The UFAC voluntary standard was established in 1977, and was amended in 1983. As noted previously, in 1994, the Commission deferred the portion of the petition received from the National Association of State Fire Marshals that pertained to cigarette ignition in order to assess the effectiveness of the UFAC voluntary standards program of cigarette ignition resistance.

CPSC testing and surveys over the years have shown a steadily increasing proportion of cigarette ignition resistant furniture on the market. Based on sales-weighted estimates of CPSC laboratory test results, an estimated 83 percent of currently produced furniture resists cigarette ignition. The current estimate represents about a 70 percent improvement in cigarette ignition resistance since 1980.

Level of Compliance with UFAC

A 1996 survey demonstrated that an estimated 86 percent of manufactured upholstered furniture, including products from non-UFAC member firms, complied with the UFAC cigarette ignition component guidelines. This figure represented a considerable improvement over the less than 50 percent estimated compliance level of the late 1970s, when the UFAC program was first established.

Addressing Cigarette Ignition in the Current Rulemaking

For the Commission to propose a rule that addresses cigarette ignition of upholstered furniture, the Commission must demonstrate that the UFAC voluntary standard does not adequately address the cigarette ignition risk or that there is not substantial compliance with the voluntary standard. The evidence before the Commission, however, suggests otherwise--on both counts. It appears that the UFAC voluntary standard is adequately reducing the cigarette ignition risk, and that the compliance with the standard is substantial. If this situation is also the case

when the Commission is at the Notice of Proposed Rulemaking stage, then the Commission would be compelled by the FFA to terminate rulemaking at that time.

Conclusion

The question of the flammability of upholstered furniture has been one of the most difficult and technically complex issues that the Commission has faced during my service. Fires associated with the ignition of upholstered furniture inflict a great deal of human suffering and economic costs each year. At the same time the remedies that seek to address such flammability are expensive and have potential drawbacks. There are no easy answers or easily-agreed upon solutions to this problem.

Persons who know my regulatory philosophy know that I dislike approving ANPRs unless I believe that there is a strong probability that the Commission will be able to approve a rule. I firmly believe that an ANPR stands for Advance Notice of Proposed Rulemaking. It is unusual for me to vote in favor an ANPR with the reservations that I have about the Commission's ability to approve a final rule. It is, however, unusual to receive a staff recommendation to issue an ANPR on the same and a related hazard approximately nine years after the first ANPR on one of the hazards was issued. Because the hazards of small open flame ignition and cigarette ignition of upholstered furniture are related and should be dealt with in the same rulemaking, I am voting to issue the ANPR.



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**STATEMENT OF THE HONORABLE THOMAS H. MOORE
IN SUPPORT OF ISSUANCE OF ANPR
ON IGNITION OF UPHOLSTERED FURNITURE BY SMALL OPEN FLAMES
AND SMOLDERING CIGARETTES**

October 17, 2003

I have voted to expand the Commission's ongoing Flammable Fabrics Act (FFA) rulemaking proceeding commenced in 1994 to also address ignition by smoldering cigarettes in addition to ignition by small open flames. It is my hope that expanding this rulemaking proceeding will have the effect of reducing the still large proportion of fire losses resulting from cigarette ignition of furniture and possibly expediting the overall process of adopting a uniform national mandatory standard for furniture flammability.

In 1994, the Commission considered a petition from the National Association of State Fire Marshals (NASFM) requesting rulemaking under the Flammable Fabrics Act (FFA) to address all upholstered furniture fire risk, including cigarette ignition. The Commission granted that petition in part and issued an ANPR on the specific risk of small open flame-ignited fires. The Commission deferred action with respect to cigarette-ignition fires pending a CPSC staff evaluation of the existing voluntary industry program, the Upholstered Furniture Action Council (UFAC) guidelines. UFAC established their voluntary industry program as an alternative to CPSC rulemaking in 1977 and the UFAC voluntary guidelines were amended in 1983. The CPSC staff evaluation of the existing voluntary industry program was to include an examination of the level of conformance to the UFAC guidelines and the overall level of cigarette ignition resistance among products on the market. Based on a 1996 CPSC survey, more than 85 percent of then currently manufactured upholstered furniture met the UFAC standard. In addition, based on sales-weighted estimates of CPSC laboratory test results, more than 80 percent of then currently produced furniture was estimated to resist cigarette ignition.

However, according to the U.S. International Trade Administration, upholstered furniture imports have been growing at a compound annual rate of 21 percent since 1998. This growth gives rise to concerns that the present voluntary approach to cigarette ignition resistance is unlikely to continue to generate high levels of conformance. Also, furniture fires killed more people in 1998 than did fires involving any other category of consumer products under the Commission's jurisdiction and cigarette-ignited furniture fires account for a substantial majority of those deaths and total furniture fire losses. Additionally, a majority of the likely benefits of a small open flame standard would be secondary benefits associated with reductions in cigarette fire losses. These factors, taken together, reasonably support accepting staff's recommendation to now address both fire risks directly in a single proceeding.